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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,919	03/23/2004	Roger Leyden	00831P0070US	3889
32116	7590	12/29/2004	EXAMINER	
WOOD, PHILLIPS, KATZ, CLARK & MORTIMER 500 W. MADISON STREET SUITE 3800 CHICAGO, IL 60661			COURSON, TANIA C	
			ART UNIT	PAPER NUMBER
			2859	

DATE MAILED: 12/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/806,919

**Applicant(s)**

LEYDEN ET AL.

**Examiner**

Tania C. Courson

**Art Unit**

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 22 and 28 are objected to because of the following informalities:

- a) claim 22, in line 2, "costing" should read "coating";
- b) claim 28, in line 2, "fist" should read "first".

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 7, 10, 15, 18 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by O'Neil (US D406,539).

O'Neil et al. discloses in Figures 7-12, a growth measuring display device (see also Attachment #1, where letters A-C have been added by the examiner) comprising:

With respect to claims 1-4, 7, 10, 15 and 18:

- a) a wall having a generally flat front surface (Fig. 7, A) facing in a first direction and a peripheral edge (Fig. 7, B), spaced graduations on the wall (Fig. 7) relative to which a dimension of an object (Fig. 7, C) placed in front of the wall can be gauged (Fig. 10), a surface on the wall which reflects an

- image of an object located in front of the wall (Fig. 7 and description of Fig. 7) and at least one of i) a depiction of at least one of a) an animate object b) an inanimate object and c) a scene ii) at least one word iii) a design, and iv) a logo on the wall (Fig. 10) and viewable from in front of the wall in conjunction with the spaced graduations (Fig. 10) and a reflective image from the surface on the wall (Fig. 10), wherein the wall is formed so that the shape of at least a portion of the peripheral edge is at least nominally matched in shape to a shape of at least a portion of the at least one of i) a depiction of at least one of a) an animate object b) an inanimate object and c) a scene ii) at least one word iii) a design and iv) a logo (Fig. 7);
- b) wherein the wall has a length extending in a vertical direction and a width and the graduations allow gauging of the height of an object located in front of the wall (Fig. 10);
- c) wherein the length of the wall is substantially greater than the width of the wall (Fig. 10);
- d) wherein the wall comprises a first layer having a front and rear (Fig. 7, A) and at least a portion of the at least one of i) a depiction of at least one of a) an animate object b) an inanimate object; and c) a scene; ii) at least one word iii) a design and iv) a logo is applied to the rear of the first layer and viewable through the first layer at the front of the first layer (Fig. 7);

- e) wherein the rear of the first layer is coated with a first material that is viewable through the first layer (Fig. 7) and reflects an image of an object located in front of the first layer (Fig. 7);
- f) wherein the wall comprises a second layer (Fig. 7, C) applied at the rear of the first layer so that the first material and the at least one of i) a depiction of at least one of a) an animate object, b) an inanimate object, and c) a scene, ii) at least one word iii) a design, and iv) a logo resides between the first and second layers (Fig. 10);
- g) wherein the apparatus has a front and rear with a thickness between the front and rear of the apparatus (Fig. 7) and an areal extent (Fig. 7) and the apparatus has a substantially uniform thickness over substantially the entire areal extent of the apparatus (Fig. 10);
- h) wherein the wall has a nominally squared shape with four transverse edge portions (Fig. 10) and one of the transverse edge portions has a first length and a running length of the one transverse edge portion is substantially greater than the first length (Fig. 10).

With respect to claim 21:

- a) a wall having a generally flat front surface (Fig. 7, A) facing in a first direction and a peripheral edge (Fig. 7, B), spaced graduations on the wall relative to which a dimension of an object placed in front of the wall can be gauged (Fig. 10), a surface on the wall which reflects an image of an object

(Fig. 7, C) located in front of the wall (Fig. 7 and description of Fig. 7) and at least one of i) a depiction of at least one of a) an animate object, b) an inanimate object and c) a scene, ii) at least one word iii) a design and iv) a logo on the wall (Fig. 10) and viewable from in front of the wall in conjunction with the spaced graduations (Fig. 10) and a reflective image from the surface on the wall (Fig. 10), the wall comprising a first layer (Fig. 7, A) and a second layer (Fig. 7, C), the first layer defining the flat front surface (Fig. 8), the at least one of i) a depiction of at least one of a) an animate object, b) an inanimate object, and c) a scene, ii) at least one word iii) a design; and iv) a logo located between the first and second layers so as to be viewable from in front of the wall through the first layer (Fig. 10).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 5-6, 8-9, 11-14, 16-17, 19-20 and 22-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neil in view of Landau (US 2,736,100), Huber (US 2,932,897) and Steckler (US 2,369,988).

O'Neil discloses a growth measuring display device as stated above in paragraph 3.

O'Neil further discloses a first layer comprising a clear material (description of Figure 7) and wherein the step of coating the rear of the first layer comprises coating the rear of the first layer over the at least one of i) a depiction of at least one of a) an animate object, b) an inanimate object, and c) a scene, ii) at least one word iii) a design, and iv) a logo (Fig. 7).

O'Neil does not disclose the following:

With respect to claims 5-6, 8-9, 11-14, 16-17, 19-20 and 22

- a) wherein a layer comprises a plastic material;
- b) wherein a layer has a thickness between the front and rear of the layer that is in the range of .04-.12 inches;
- c) wherein a material comprises aluminum;
- d) wherein a material comprises a metal material that is applied in a vacuum chamber;
- e) wherein a layer comprises High Impact Polystyrene;
- f) wherein a second layer is secured to a first layer through pressure sensitive adhesive;
- g) wherein a portion of a peripheral edge is formed through laser cutting;
- h) wherein a portion of a peripheral edge is non-straight;
- i) wherein a portion of a peripheral edge on a first spaced side of a wall has a non-straight configuration over more than one-half the height of the wall at a first spaced side;

- j) wherein the at least portion of a peripheral edge has adjacent contiguous portions which extend generally along first and second transverse lines, the first and second lines defining an acute angle;
- k) wherein there is at least one opening through the wall, the opening fully surrounded and capable of receiving a fastener to facilitate mounting of the wall to a support;
- l) wherein a reflective coating is applied to a second layer.

With respect to method claims 23-27:

- a) cutting a first layer to define a peripheral edge;
- b) the step of cutting the first layer comprises simultaneously cutting the first and second layers;
- c) wherein the step of applying a second layer comprises bonding the second layer to a first layer through a pressure sensitive adhesive;
- d) wherein the step of coating the rear of a first layer comprises vacuum coating a rear of the first layer with a first material that comprises metal;
- e) wherein the step of simultaneously cutting first and second layers comprises simultaneously laser cutting the first and second layer.

Landau teaches a measuring device that consists of wherein a layer comprises a plastic material (column 3, lines 29-32), wherein a material comprises a metal material (column 3, lines 29-32), wherein a reflective coating is applied to a second layer (column 3, lines 29-32) and



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wherein the step of coating the rear of a first layer comprises coating a rear of the first layer with a first material that comprises metal (column 3, lines 29-32). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the growth measuring display device of O'Neil, so as to include a plastic or metal material, as taught by Landau, so as to provide a sturdy material during use of the device and method.

Regarding claims 6 and 11: the thickness of the layer, O'Neil discloses a layer having a thickness (Fig. 7) but does not disclose a particular value for this parameter. However, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a layer having a thickness in the range of .04-.12 inches, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the "optimum range" involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Therefore, one skilled in the art would change the optimum range of the layer in order to suit the needs of the user of the device.

Regarding claims 8 and 12: O'Neil discloses the layer (Fig. 7) made of a material (Fig. 7). The particular type of material used to make the layer, absent any criticality, is only considered to be the use of a "preferred" or "optimum" material out of a plurality of well known materials that a person having ordinary skill in the art at the time the invention was made would have find obvious to provide using routine experimentation based, among other things, on the intended use of Applicant's apparatus, i.e., suitability for the intended use of Applicant's

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apparatus. See In re Leshin, 125 USPQ 416 (CCPA 1960 ) where the court stated that a selection of a material on the basis of suitability for intended use of an apparatus would be entirely obvious. Therefore, one skilled in the art would change the type of material of the layer in order to suit the needs of the user of the device.

Huber teaches a measuring device that consists of wherein a second layer is secured to a first layer through pressure sensitive adhesive (column 2, lines 57-59) and wherein the step of applying a second layer comprises bonding the second layer to a first layer through a pressure sensitive adhesive (column 2, lines 57-59). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the growth measuring display device of O'Neil, so as to include a securing through pressure sensitive adhesive, as taught by Huber, so as to provide an increase in bonding between materials during use of the device and method.

Regarding claims 9, 14, 23-24 and 26-27: Where a product by process claim is rejected over a prior art product that appears to be identical, although produced by a different process, the burden is upon the applicants to come forward with the evidence establishing an unobvious difference between the two. In re Marosi, 218 USPQ 289 (Fed. Cir. 1983).

Steckler teaches a measuring device that consists of wherein a portion of a peripheral edge in non-straight (Fig. 1), wherein a portion of a peripheral edge on a first spaced side of a wall has a non-straight configuration over more than one-half the height of the wall at a first

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spaced side (Fig. 1), wherein the at least portion of a peripheral edge has adjacent contiguous portions which extend generally along first and second transverse lines (Fig. 1), the first and second lines defining an acute angle (Fig. 1) and wherein there is at least one opening through the wall (Fig. 1, opening 14), the opening fully surrounded and capable of receiving a fastener to facilitate mounting of the wall to a support (Fig. 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the growth measuring display device of O'Neil, so as to include a non-straight peripheral edge and an opening, as taught by Huber, so as to provide an increase in the interest of the user during use of the device and method and so as to provide a means of supporting the device during use of the device and method.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The prior art cited on PTO-892 and not mentioned above disclose a measuring device:

Kang (US D312,217)

Bergstedt (US D277,833)

Stroyman et al. (US D190,525)

Zuckerman (US D187,493)

Noth (US 116,049)

Sutton (US 2,324,334)

Doty (US 1,457,964)

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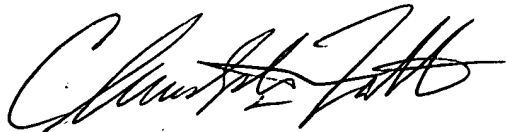
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tania C. Courson whose telephone number is (571) 272-2239.

The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez, can be reached on (571) 272-2245.

The fax number for this Organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DIEGO F.F. GUTIERREZ  
SUPERVISORY PATENT EXAMINER  
GROUP ART UNIT 2859

TCC  
December 23, 2004

**CHRISTOPHER W. FULTON**  
**PRIMARY EXAMINER**